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Towards an International Tribunal on East Timor

A Briefing Paper

By Sabine Hammer

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Mo u. Fr $10.^{00}$-$13.^{00}$
Mi $15.^{00}$-$18.^{00}$

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Raiding East Timor without Repercussions? 3
Jurisdiction on Genocide- What is at Stake 3
  The Convention on Genocide 3
  International Criminal Court or Ad hoc- Tribunal? 3
  The Problem of Recompense 4
  An Ad hoc Tribunal on East Timor- a Matter of Principle Interest 5
Political changes in Indonesia? 6
Justice is Blind?- Probably not from a Javanese Perspective 7
East Timor at the UN prior to the Special Session 8
The Forth Special Session of the UN Commission for Human Rights, September 23, 24 and 27 1999 9
  Questions of Mandate 9
  National Inquiry Commission or International Tribunal? 11
  Compromises at the Special Session 16
Resistance against a Tribunal 17
Political or Technical Problems ? 21
Recommendations 29
Annex 32
UN related Documents 32
  Special Session of the UN Commission on Human Rights 32
    Documents related to the UN Commission on Human Rights 32
      Commission on Human Rights resolution 1999/S-4/1 32
      Report of the High Commissioner for Human Rights on the human rights on the situation in East Timor 36
      Letter dated 9 September 1999 from the Permanent Representative of Portugal 45
      Statements by East Timorese Representatives 46
        Summary of Dr. JOSE RAMOS-HORTA's oral intervention 46
        Summary of Bishof CARLOS BELO's oral intervention 47
      Statements by the Indonesian Representative 48
        Aide-Memoire 48
        Statement by the Indonesian Delegation Geneva, 23 September 1999 50
        EXPLANATION OF VOTE AFTER THE VOTE BY THE AMBASSADOR (I) 51
        STATEMENT BY THE INDONESIAN AMBASSADOR (II) 51
      NGO-Statements 54
        IFET: Testimony to UN Human Rights Commission in Geneva 54
        'Fears of Bloodbath Around Time of August 30 Ballot: 60
        Human Rights Watch CALLS FOR TIMOR PROBE 61
        Statement by Human Rights Watch to the Commission on Human Rights 63
    UN Security council 70
        REPORT OF THE SECURITY COUNCIL MISSION TO JAKARTA AND DILI S/1999/976 70
        STATEMENT BY THE HIGH COMMISSIONER FOR HR TO THE SEC. COUNCIL 78
        RESOLUTION 1272 (1999) 82
    UNAMET 86
        The destruction of East Timor since 4 September 1999 86
        Humanitarian Aid Mission to Sare and the Attack of BMP Militia on the Humanitarian Mission 88
Militia 92
        DECLARATION of East Timorese Integration fighters 92

Selected items from the media *93*
Revealed: the plot to crush Timor, September 16, 1999 93
312 babies die in refugee camps, 11,892 are ill and malnourished 95
José Ramos-Horta: »Geplant wurde alles in Jakarta« 102
Der ost-timoresische Friedensnobelpreisträger José Ramos-Horta klagt im STERN-Gespräch führende indonesische Militärs als Kriegsverbrecher an 102
Belo demands Wiranto be tried for East Timor atrocities, Oct 28 105
Mass abuses: A list of key suspects is in the hands of the investigators, September 18, 1999, ... 106
'Too early' to plan trials for atrocities - September 21, 1999 108
EAST TIMOR: Leads Await An International Tribunal, 24.9.99 109
TNI, UN differ on control; Interfet troop tears RI flag, 28.9. 1999........ 112
East Timor militia leader calls his men to prepare for guerrilla war 114
Faster UN Probe Urged on Discovery of Bodies, Oct 2........ 116
Putting a face on Timor's militias October 4, 1999 118
UN resolution on East Timor drops reference to human rights inquiry 122
UNAMET to push for probes into killed, missing East Timor staff........ 123
Dili's destruction rocks Gusmao, 25.10.99 124
At least 34 killed in East Timorese enclave, refugees say, Oct 27 125
Amnesty lashes out at UN for delays in Timor rights probe, Oct 28 126
Interfet pledges to keep up human rights investigations in East Timor 127
Chilling query on the missing 128
Atrocity evidence feared at risk........ 130

Reports related to the Massacre of Suai *131*
Male savagery as old as history looms inside East Timor Church 131
Timor's Belo blesses Suai survivors amid evidence of more atrocities, Oct 26 134
Signs of a massacre........ 135
Witness says up to 200 massacred in East Timor church compound 138
Troops Gather Evidence of E. Timor Massacres 139

Briefing Papers of the East Timor International Support Center (ETISC) *145*
ETISC BRIEFING PAPER (1/3) Sept 28, 1999........ 145
Briefing Paper (2/3) September 28, 1999 154
Briefing Paper (3/3) 159
Briefing Paper, Oct 8, 1999 165
Top Indonesian military leaders plan guerrilla war in E. Timor, Aug 6, 1999, MEDIA RELEASE 174

> "If we cannot keep East Timor, then we shall turn it into a desert"
>
> INDONESIAN ARMY REPRESENTATIVE before the popular consultation[1]

> When the Indonesian military saw the people still alive they give instructions to the militias to kill them. [...] The military say kill, they kill. We don't know who's bodies they are. They cut their heads off. They took a lot of the heads to the place where there is lots of crocodiles and they ate all the heads.
>
> EUGEBIO SOARES, MILITIA MEMBER[2]

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[1] Sidney Morning Herald, 26.8.99

2 in: Gruesome clues point to fate of some of Timor's missing thousands, 7:30 Report, Australian Broadcasting Co. Transcript 4/10/99

Raiding East Timor without Repercussions?

On August 30, 1999, nearly 80% of the East Timorese voters opted independence. Two weeks later their homes had turned to ashes, hundreds of thousands East Timorese were forced to flee or were abducted at gunpoint. Today many remain unaccounted for. An unknown number of them got killed.

As the first footage of the rampaged capital Dili and pictures of gruesomely mutilated bodies made their way through TV into the living rooms of the world, calls for an international tribunal against the perpetuators were loud[3]. Meanwhile first steps have been undertaken - and encountered bitter resistance.
Today it remains uncertain if an international tribunal on East Timor will finally be established.

Jurisdiction on Genocide- What is at Stake

The Convention on Genocide

In 1946, when the experiences of the Holocaust were still fresh. Under the impression of the revelations at the Nürnberg International Military Tribunal, the General Assembly of the United Nations affirmed that

> "genocide is a crime under international law which the civilised world condemns, and for the commission of which principals and accomplices are punishable."
> General Assembly of the United Nations, 1946

In 1948 the General Assembly approved the *Convention on the Prevention and Punishment of the Crime of Genocide*, which already went into effect in 1951.
Last year marked the 50th anniversary of the convention, however it has yet to fully enfold its potential. Whereas international human rights instruments' in the framework of the UN have been elaborated, there is still no adequate mechanism to enforce them - including the convention of genocide.

International Criminal Court or Ad hoc- Tribunal?

It was only in June last year - after bitter fights in a five-week conference in Rome - that UN members decided to establish an *International Criminal Tribunal (ICC)* in the Hague. However the ICC is still far from taking on to fulfil its duties: Whereas 120 states had drawn up the proposed statutes, till today only Senegal, Trinidad and Tobago, Italy and San Marino have ratified the document. That is 4 of required 60 states. Therefore the ICC can not yet be formally established - and it remains unsure when this will be possible. Until then ad hoc tribunals remain the only potent mechanism for the UN human rights instruments related to war crimes, crimes against humanity and genocide.

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[3] The German churches repeatedly called for criminal investigations. Suffragan Bishop Leo Schwarz, the chairman of the German Commission of Jutitia et Pax, already urged criminal proceedings on June 2 followed by a call of the protestant churches of Germany for an international tribunal on Sept. 9, 1999.

Whereas the ICC should, in principle, not persecute crimes retroactively[4] , i.e. before it is established, there is still a lingering discussion if and how extremely serious atrocities like those of the Khmer Rouge should be dealt with on an international level[5]. This leaves also room for the question if crimes committed during the time of the Indonesian occupation in East Timor before Jan. 27, 1999 should be persecuted. This is not discussed at the moment.

The Problem of Recompense

This is a great concession to the perpetuators. The death-toll of the East Timorese population under the Indonesian occupation before 1999 is estimated to be around 200.000 people. With the current arrangement the families of the victims that lost their bread-earners before January 27 , 1999 will have no chance to be recompensed. In 1995 a US court ruled that US $ 14 Million in damages had to be paid to New Zealander Helen Todd against Panjaitan for the murder of her son at the massacre of Santa Cruz, Dili [6].

Recompense opportunities have been established in the preceding ad-hoc tribunals and are enshrined in the regulations of the ICC.

Assets of the convicted may be used settle their material commitments towards the victims. This might include income generated in East Timor by companies and conglomerates linked to the perpetrators and instigators and may include proceeds linked to oil and gas exploration as well as drilling in East Timor and the Timor gap. The case of Iraq already constitutes a precedence of oil assets used for recompense.

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[4] This was in the American interest: The issue of most serious war crimes of the US Army in Indochina remain unresolved - including also questions of recompense for - e.g.regarding the carpet bombings in Cambodia and the use of Agent Orange in Laos, Cambodia and Vietnam. The issue is delicate since US Veterans fight vigorously and not without success- to get their recompense claims materialised in the US. Vietnam is not able to finance the costs for the most basic care of seriously disabled victims of Agent Orange.

[5] It is interesting that the US before summer last year vehemently advocated an ***ad hoc*** tribunal against the Khmer Rouge - while at the same time they were being much less enthusiastic about the ICC- discussion - the advocators for the ICC were using the Khmer Rouge case as a strong argument for the establishment of a permanent court. When the discussion reached ist climax in spring - just weeks ahead of the Rome conference - Pol Pot died . Some say this was not a coincidence- and the discussion indeed cooled down considerably afterwards.

[6] JOHN PILGER Timor conspiracy: Australia's role Green Left Weekly, Issue #369 July 28, 1999.

An Ad hoc Tribunal on East Timor- a Matter of Principle Interest

If an ad hoc tribunal on East Timor is prevented, this will have further negative impacts on the slow process of establishing the ICC. As long as there is no institutionalised court it is quite simple to prevent the persecution of genocide which is what some member states of the UN would like to see, with the rest not really enthusiastic to bring it about anyway. East Timor therefore is of principal interest.[7]

Enhancing international jurisdiction will speed up the implementation of the universal human rights. But if the genocide in East Timor escapes with impunity , this will constitute a serious set back for the human rights movement undermining the progress made so far.

Futhermore the reputation and authority of the United Nations itself is at stake. Even months before the ballot, UN convoys were attacked[8], UNAMET (UN Assistance Mission for East Timor), civpols (civilian, i.e. unarmed international police officers) and international observers, NGO-workers as well as journalists were threatened at roadblocks, beaten and shot at. UNAMET staff was killed, UNAMET property destroyed and looted. Paramilitary troops openly used looted UN-vehicles for their attacks. The UN supervised May 5th agreement that had left the responsibility for security with the Indonesian turned into a mere mockery.

> "I was supposed to be flown out on a Hercules transport [Indonesian military plane], but that plane was filled up with all the goods that the militias and the army were looting - they were carrying on engines, they had an entire truck, boxes full of TVs, there were many boxes that apparently came from the UN compound because they had UN labels on them - and they were just packing it with everything they could. So we had to wait for the next flight".[9]
>
> Allan Nairn, Journalist

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[7] On Sep 8 UNICEF Executive Director Carol Bellamy warned that "those responsible for the violence against civilians in East Timor as well as against humanitarian personnel and premises will one day face justice under international law. The targeting of UN and humanitarian personnel, is a direct breach of international law". Indeed this call should be taken serious. Humanitarian aid in war zones is getting more and more difficult because international personnel tends to be drawn into the conflicts and become targets more easily than in former times. A clear and firm position - followed by action - might help to ensure the effectiveness of humanitarian operations all over the world. The UNICEF Executive Director Carol Bellamy also stressed that "The necessity of fighting impunity for such serious crimes highlights the need for mechanisms such as the International Criminal Court (ICC) to become fully operational." - from the perspective of humanitarian assistance.

[8] See for example: "Humanitarian Aid Mission to Sare and the Attack of BMP Militia on the Humanitarian Mission" in the Annex chapter "Unamet"

[9] Chris Masters, East Timor: The Vanishing. Australian Broadcasting Corporation, Four Corners weekly news programme [TV and radio], 18/10/99 [transcript available online Oct. 22]

Political changes in Indonesia?

In Indonesia a new government has taken office. While enthusiastically hailed as a step towards democracy by some, it is still too early to predict whether the Indonesian military will allow the empowerment of a civil society and implementation of human rights' principles[10]. Some observers are worried. Exactly those generals trying to reform the Indonesian armed forces have been removed from the TNI by making them civilian ministers. General Wiranto – as a co-ordinating Minister more powerful than a regular minister - is in charge of internal security now –that political field that in the eyes of Indonesian democrats should have been completely separated from the army. It was the segregation of police and armed forces had constituted a promising step in April this year. His new position might prompt Wiranto to set up a powerful intelligence network answerable only to him, following the example of Burma's Gen. Khin Nyunt. Though the military influence on national politics may appear to have been reduced on the surface, it is actually only driven underground. This might prove much more dangerous in future. It is especially worrisome in relation to the militia system that has been tested in East Timor.

There is fear, too, that not justice but impunity might prevail. The new president Abdurrahman Wahid[11], who took office with the support of the Indonesian army, has offered Lt. Gen. Prabowo Subianto to reconsider his case. Prabowo Subianto is the former commander of the army's elite unit Kopassus. He was demoted from the army following the 1998 mid-May unrest. He is considered to have masterminded the covered military action that culminated in riots on May 12-14 killing more than 1,200 people. Members of the special forces raped many Chinese women and kidnapped political dissidents.[12] There is strong indication that Prabowo has been directly involved not only in the genocide of 24 years of Indonesian occupation and but also for the intimidation and in the rampage campaign that shook of East Timor in 1999[13]. In fact he has been named as one of the key suspects for an international tribunal by Peace Nobel-Laureate José Ramos-Horta [14]. Prabowo who is married to one of Soeharto's daughters is closely linked to the ex-dictator. Soeharto had officially stepped down from office in 1998 to resort to ""follow the course of tut wuri handayani"[15]- the art of pulling the strings from behind.

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[10] There are even indications that the military will expand their influence on the society, reanimating the old sopol- ideology- rather than confining themselves to their barracks.
Indonesia's Wiranto: Military To Have "Wider Role".Associated Press October 31, 1999
SINGAPORE (AP)--Indonesia's influential security minister has reportedly said the military will have a "much wider role" in the future under the country's new government. The military will make "various efforts in helping the people's welfare, which we call nation-building and national development," Gen. Wiranto was quoted as saying [...]This is a much wider role and doesn't focus merely on politics".

TNI's reform agenda under threat: Crouch. Indonesian Observer29th October 1999:
"The reform agenda of the powerful Indonesian Defence Forces (TNI) is under threat as several reformist military generals have been appointed to ministerial posts, says a prominent foreign analyst. Harold Crouch, a professor of the Australian National University (ANU), said yesterday the TNI will face difficulties in meeting its new paradigm of reform values, as previously proposed by former military chief General Wiranto . Crouch said that the difficulties arise over the appointment of a number of TNI officials, who are dubbed as "reform generators" inside the TNI, to be ministers in President Abdurrahman Wahid's cabinet. "This is a big loss for TNI. [Lt. Gen] Susilo Bambang Yudhoyono and [Lt. Gen.] Agum Gumelar are TNI officials with a primary role to reform TNI from inside. I hope Agus Wirahadikusumah can replace this role to initiate reform from inside," Crouch said[...]He added that according to General Wiranto, TNI officials who occupied civilian posts are given choices to remain in service in TNI and leave their job or resign from TNI and continue with their occupations."
[...]

[11] President Wahid's policy on East Timor is not consistent. While he participated in a NGO conference on East Timor in Portugal and met the East Timorese resistance leader Xanana Gusmao whren he still was under house-arrest, he also called for the "diplomatic isolation" of Australia shortly before the Timorese vote on independence. Katherine Butler reported Mr Wahid had claimed Australians working for the UN Mission in East Timor during the referendum helped to provoke militia violence by displaying pro-independence bias in the run-up to the ballot. ("Wahid's threat to Australia's force in East Timor", The Independent [London] 21 October 1999) Still he is considered to be more favourable to East Timor's independence than his vice-president Megawati Soekarnoputri
Speaking to a huge rally of the party on 14 February, she declared that the decision to integrate East Timor into the Republic was irreversible. (see also Tapol, the Indonesia Human Rights Campaign Bulletin Online 151 - March 99 Indonesia's retreat from East Timor)

Justice is Blind?- Probably not from a Javanese Perspective

Indonesia's judiciary system cannot guarantee to render justice in an independent, fair and impartial way. There are no traditions of the rule of law.

Indonesian policemen whose duty it should be to enforce law and order not only stood idly by when heavily armed militias attacked East Timorese nationals, foreign correspondents, observers and UNAMET representatives. They themselves engaged in looting[16].

> "The police looted goods like television sets, refrigerators, outboard motors, generators and kept them in the police station to take with them when they go".[17]
>
> UNAMET Local Staff Member

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[12] Interestingly - to defend himself- Prabowo alleges that the military top brass is responsible for the crimes he is accused of. **This is actually an admission that the Indonesian military committed crimes against humanity.** See also Indonesian Observer20th October 1999:
"However, the government sent a letter to the National Commission on Human Rights (Komnas HAM) two months ago, acknowledging that no evidence can be found that Prabowo was involved with the May riots. The lawyers said the letter dated September 13 clearly proved that there were no sufficient evidence to charge Prabowo with involvement in the May violence, for which the sacking was thus legally invalid. Prabowo, who now lives in Jordan, has also been blamed for kidnapping political activists ahead of Soeharto's downfall last year. But, he has denied any wrongdoing. [...] He said Prabowo would reveal all those behind the much-condemned abductions by Kopassus personnel when he returns to Indonesia. The lawyer did not say when. [...]**Asked why Prabowo did not immediately uncover the abduction case, Soemitro said: "It's an eastern custom. He [Prabowo] still appreciates his superiors and the older."**

[13] Witnesses told the author, that Prabowo was twice seen in Timor in 1999.
See also Adam Schwartz: A Nation in Waiting. Indonesia's Search for Stability. St Leonards, 1999. P335ff
And ETISC BRIEFING PAPER (1/3) Sept 28, 1999

[14] Interview by the author, Geneva 24.9.99.

[15] Adam Schwartz: A Nation in Waiting. Indonesia's Search for Stability. St Leonards, 1999.p 358.

[16] Also confirmed by Aniceto Lopes, lawyer and chairman of the East Timorese human rights organisation Yayasan Hak: He saw his own stolen motorbike being used by the police (interview with the author).

Also the lack of adequately trained judges and inquiry staff leads to serious problems. Corruption and nepotism as well as politically motivated exertion of influence closely linked with the concept of „tut wuri handayani" remains rampant. The decision who is investigated, charged, convicted or acquitted may depend on privileges, political advantages and loyalties rather than on evidence. The army still clings on to its power-legitimising myth to be the parental leader of the nation and acts from a power-abode detached from common norms of social behaviour. According to this Javanese concept the ruler stands above the law. His actions are not bound by moral standards, his prime duty is to guarantee a cosmic harmony that is in reality reduced to the idea of stability - simply meaning the maintance of the status quo of the current power arrangement. In this system impunity therefore is a natural- even necessary- feature. To question this is to challenge the current order. Rendering justice therefore amounts to revolution and aims at the very heart of the claim on power and will therefore be met by most fierce resistance. But this is not a solely Javanese feature, there will be few culprits in the world that would hail a court hearing of their case. Indonesian perpetrators might wrongly perceive the legal proceedings as a political, maybe even neo-colonial manoeuvre. The truth however is that an international tribunal will look into crimes that in fact are politically, ideologically and to some extend economically motivated – as it is common for genocide, war crimes and crimes against humanity. The magnitude of a series of inconceivable crimes can be no reason not to investigate and punish them. Impunity threatens the fairness and impartiality of the justice system as such. Will states be right to punish a person that murdered another one whereas somebody may go free if he not just kills once but a hundred, a thousand times?

East Timor at the UN prior to the Special Session

50 years ago Queen Juliana of the Netherlands granted full independence to the Dutch colonies in the Malayan Archipelago. East Timor was a Portuguese colony and did therefore not become part of the newly founded state. Indonesian troops invaded East Timor in violation of international law in 1975 in a move never recognised by the world community[18] Consequently the case of East Timor has never been dropped from the agenda of the United Nations[19].

The May 5th ,1999-agreement of on the terms of a popular consultation process was a face-saving offer to Indonesia to solve this problem. And had the process enfolded in a peaceful manner the war crimes committed during 24 years of occupation - that had

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[17] Chris Masters, East Timor: The Vanishing. Australian Broadcasting Corporation, Four Corners weekly news programme [TV and radio], 18/10/99 [transcript available online Oct. 22]

[18] Due to geostrategic and petrochemical considerations Australia opted for recognising Indonesia's claim of sovereignty over East Timor. Given the current policy this may be considered as obsolete. The Australian government may have to reconsider its formal standpoint since its policy is conflicting the international protection troops InterFET which are headed by Australia.

[19] See UN resolutions 384 (1975) of 22, December 1975, 389 (1976) of 22 April 1976, 1236 (1999) of 7 May 1999, 1246 (1999) of 11 June 1999, 1262 (1999) of 27 August 1999 and 1264 (1999) of 15 September 1999, 1272 (1999) of 25 October 1999

already killed one third of the population - would most probalbly not have been a investigated.

But East Timor's history was to take yet another tragic turn. Indonesian instigators orchestrated terror and intimidation campaigns in order to prevent independence supporters from winning the vote. This proved to be in vain, nearly 80% opted for independence. Under the command of the Indonesian Army's the special forces Kopassus and the strategic reserve elite Kostrad (para)military troops, commonly termed "militias", unleashed their carefully prepared bloody September campaign, vandalising villages and towns, killing, taking hostage and permanently driving out of their homes about 60 % of the East Timorese population. They also threatened and attacked international personnel.
In response ,

> the UN Security council adopted its resolution 1264 (1999) on September 15th condemning " all acts of violence in East Timor and demanded that " that those responsible for such acts be brought to justice."[20]

The Forth Special Session of the UN Commission on Human Rights, September 23, 24 and 27 1999

Questions of Mandate

Already six days earlier the Permanent Representative of Portugal to the United Nations Office at Geneva, Alvaro MENDONCA E MOURA, had addressed a letter to the United Nations High Commissioner for Human Rights. He requested a special session of the UN Commission on Human Rights (UNCHR) as a supportive initiative still leaving the

> "principal responsibility for United Nations action [...] with the Security Council"[21]

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[20] During the session Mary Robinson, High Commissioner for Human Rights, was invited by the secretary-general to take the floor. This was the first time a High Commissioner for Human Rights addressed the Security Council.

[21] dated 9 September 1999, UN dok E/CN.4/S-4/2 released 21 September 1999
Indonesia, supported by the "Asia Group", vehemently questioned the legality of the session when it convened. According with the regulations for special sessions of the Commission on Human Rights (resolution 1990/48 of 25 May 1990 and decision 1993/286 of 28 July 1993) a majority of the commission's 53 member countries must support the meeting.
The office of the High Commissioner for Human Rights said it had received 26 written responses in favour by the deadline of 16. 9. 1999, 6pm - one less than was needed. However a 27th nation, Rwanda, had telephoned 5.30 pm to give its approval because the Rwandan foreign ministry said it could not get through to its UN

as this environment could more strongly empower any actions the UN might take.
A special session - only the 4th in history - indeed convened in Geneva on September 23, 1999 and adopted resolution 1999/S-4/1 through a roll-call vote[22] . It requested the Secretary General to establish an international commission of inquiry, slightly deviating from preceding procedures of that kind, namely Yugoslavia (special sessions in 1992 and 1993) and Rwanda (1994). There the *Security Council* - not the *Secretary General* - established investigative commissions that eventually lead to the creation of ad hoc criminal tribunals.
In principle the UN Secretary General may also appoint such a commission (as may Commission on Human Rights or the High Commissioner herself) but it remains to be seen if this mandate will proof powerful enough to create a tribunal that can be compared to those of Yugoslavia and Rwanda. The procedure has no precedence.

According to the resolution 1999/S-4/1 the Secretary General is to receive the commission's report "with a view to enabling him to make recommendations on future actions". This does actually not rule out the possibility that he refers the issue to the Security Council that might give a mandate to establish a tribunal under chapter VII of the United Nation's Charter. This could forced member states - including Indonesia - to co-operate with the court and investigation. However if the Secretary General should institute a tribunal by his own capacity, Chapter VII might not be applicable. The Indonesian Minister of Justice and State Secretary Muladi transferred this consequence already on the procedural level of the appointment of the commission. He declared Indonesia did not feel obliged to accept the commissions findings.[23].

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mission in Geneva. The UNCHR received Rwanda's written note at 8.19 pm and sought advice from the office of legal affairs on how to proceed. The note was considered valid. As 28 Commission member states could support this interpretation the meeting was convened. (ref. CN.4/S-4/1/Add.1 - Annotations to the provisional agenda)

[22] The resolution passed by a vote of 32 in favour and 12 opposed, with 6 commission member states abstaining. (UNITED NATIONS Press Release HR/CN/99/70 27 September 1999.)
The roll-call vote was as follows:
In favour: Argentina, Austria, Canada, Cape Verde, Chile, Columbia, Congo, Czech Republic, Democratic Republic of Congo, Ecuador, El Salvador, France, Germany, Guatemala, Ireland, Italy, Latvia, Luxembourg, Madagascar, Mauritius, Mexico, Mozambique, Norway, Peru, Poland, Romania, Rwanda, South Africa, United Kingdom of Great Britain and Northern Ireland, United States, Uruguay and Venezuela.
Against: Bangladesh, Bhutan, China, India, Indonesia, Nepal, Pakistan, Philippines, Qatar, Russian Federation, Sri Lanka and Sudan. Abstentions: Cuba, Japan, Morocco, Republic of Korea, Senegal and Tunisia.

[23] The Guardian [UK] Wednesday September 29, 1999 .
On Sept. 29 Indonesia formally rejected an international mission, saying Komnas HAM "has already set up a fact-finding commission". Indonesian authorities then asked for the commission's co-operation with its own investigation, a proposal which was accepted. (AFP Oct 1)
see also AMBASSADOR DR.N. HASSAN WIRAJUDA THE INDONESIAN PERMANENT REPRESENTATIVE AT THE UNCHR (Geneva) 27. Sept 99:
"We have all witnessed in the past four days that this August body, in this Special Session, is sharply divided as well as being controversial from the very beginning, both on the question of Procedure, in particular the question of the legal validity of the convening of the Special Session and on the substance of the resolution just adopted. It therefore lowers the legal and moral weight of the Commission on Human Rights decision which has just been adopted. My delegation voted "no" both on operative paragraph 6 as well as on the whole resolution, therefore making the resolution not binding for Indonesia".

Whether or not Indonesia may be required to co-operate with the UN investigation may not necessarily have much practical effect. The prosecutor of the two already existing ad hoc tribunals has explicitly been empowered by the Security Council of the United Nations, through resolutions that all member States have agreed will bind them and require all states to co-operate and comply with court orders, to conduct (also on site)investigations and prosecutions. However, in the case of Kosovo, official investigators were systematically denied visas for

Indonesia's position however was inconsistent. At first the government through its ambassador in Geneva had conceded it would co-operate with the commission of inquiry. Later the Minister Muladi stated the government now rejected the resolution and the commission of inquiry all together. Given the involvement of Indonesia's top elite and their economic entanglements in East Timor the shift of policy was not really a surprise to observers. The UN Spokesman's reaction to this was clear though. Fred Ekhart said:

> "We would hope for the co-operation of Indonesia, but if they fail to, it would not deter the investigation from going forward[24]."
>
> Fred Ekhart, UN Spokesman

Indonesia's change of mind is likely to effect the investigation though. Tim McCormack, the Australian Red Cross Professor of International Humanitarian Law at Melbourne University, reckons that personnel of the Indonesia's armed forces TNI will not be allowed to speak to the commission[25], nor will the commission get access to official Indonesian documents and records.
In the wake of the presidential elections it became clear how vital it is for Indonesia's TNI to remain clear of any trials. Megawati Soekarnoputri's PDI Perjuangan went far to ensure the military support for their presidential bid: They insisted that the revocation bill, ceasing the formal integration of East Timor , contained a de facto amnestying clause.[26]
However all this will not prevent an international investigation. Non-co-operation will not seriously obstruct the inquiry since there is ample of evidence. Serbia and Montenegro also had refused to co-operate with the establishment of the international criminal tribunal at first and still the investigation went ahead.

National Inquiry Commission or International Tribunal?

In an attempt to change course at the special session in last minute Indonesia's delegation resorted to a well staged deus-ex-machina effect: Indonesia's government proclaimed it would conduct investigations by its own under its National Human Rights Commission, Komnas HAM, headed by MARZUKI DARUSMAN, Golkar's

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Kosovo and the prosecutor herself was prevented from conducting an on-site investigation on the scene of one massacre. (see JUSTICE LOUISE ARBOUR, PROSECUTOR ICTY Press Release The Hague, Netherlands, 13 May 1999 JL/PIU/401-E.)

[24] East Timor war crimes" PM News, Australian Broadcasting Corporation September 30, 1999 6:26

[25] East Timor war crimes" PM News, Australian Broadcasting Corporation September 30, 1999 6:26

[26] Article 5 (2) "The revocation of Decree No. VI/MPR/1978 on the formal integration of the East Timor territory as part of the unitary state of the Republic of Indonesia as mentioned in Paragraph (1) does not invalidate any form of recognition awarded by the state on the fighters and government apparatus while the territory of the province of East Timor was part of the unitary state of the Republic of Indonesia."
Jakarta Post October 18, 1999 It was only after this, that General Wiranto rallied behind the PDI's presidential bid.Draft MPR Decree on the Popular Consultation in East Timor

Party deputy chairman[27],who had been flown in from Jakarta to address the special session in person. Whereas the special rapporteur on degrading treatment who had asked to speak had been banned to do so for formal reasons, Marzuki Darusman, also with no claim to do so, briskly took the floor to launch this surprise dipomatique. Observers are doubtful whether investigations by the national commission might produce any tangible results. It is interesting though that Marzuki Darusman - trying excuse the TNI's behaviour conceded the armed forces were involved in the carnage:

> In May he had publicly stated
> "The TNI are fighting for political survival [...] If East Timor was let go, it would discredit the whole armed forces completely[28]."

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[27] The UNITED NATIONS Press Release HR/CN/99/70 of 27 September 1999 notes that in announcing the national inquiry, the President of the National Human Rights Commission MARZUKI DARUSMAN, of Indonesia, said remaining discussion should focus on what lay ahead in the future. He believed it had "been impossible to entirely protect human rights in East Timor." He conceded though that "the conditions there following the ballot required a period of consultation, study and investigation." In order to reach a compromise, Indonesia tried to be fully incorporated into the commission of inquiry which was rejected. Indonesia then called for a separate roll-call vote in an effort to delete the relevant paragraph 6 but was defeated by 27member states in favour of retaining it and 12 opposed, with 11 abstentions.(The vote was as follows: In favour: Austria, Canada, Cape Verde, Columbia, Czech Republic, Democratic Republic of Congo, Ecuador, El Salvador, France, Germany, Guatemala, Ireland, Italy, Latvia, Luxembourg, Mauritius, Mozambique, Norway, Peru, Poland, Romania, Rwanda, South Africa, United Kingdom of Britain and Northern Ireland, United States of America, Uruguay and Venezuela.
Against: Bangladesh, Bhutan, China, Cuba, India, Indonesia, Japan, Nepal, Philippines, Russian Federation, Sri Lanka and Sudan.
Abstentions: Argentina, Chile, Congo, Madagascar, Mexico, Morocco, Pakistan, Qatar, Republic of Korea, Senegal and Tunisia.
The resolution was finally adopted by 32 votes to 12 with 6 abstentions.
The National Human rights Commission (Komnas HAM) is widely criticised for its lack of impartiality. For instance an Indonesian NGO-alliance including INFID, the Jakarta Social Institute, Kalyanamitra, KONTRAS (the Commission for the Missing and the Victims of Violence), ELSAM and the Legal Aid Foundation, the YLBHI complain about Komnas HAM failing to deal with the situation in Ambon. The NGOs and members of Komnas HAM met on Sep. 3 and 20 without achieving concrete results. The Forum had offered to help Komnas HAM by providing investigators, looking for sources of money and generally exert pressure on the government and military to find a solution for Ambon. The NGOs were worried that the Commission's independence could be compromised if it relied on the government and the military to cover the costs of the investigations (Suara Pembaruan, 20 October 1999)

Statement by the Indonesian Delegation Special Session of the Commission on Human Rights on the Situation in East Timor Geneva, 23 September 1999
"The post-ballot period has also been marred by reported cases of human rights violations. It appears that some of these violations tend to be overblown and misrepresented by the media and NG0s. Still, my Government sees these reports of violations with very serious concern. In this regard, the Indonesian National Commission of Human Rights announced on Wednesday evening (22 September 1999) to form a fact-finding Commission for Post-Ballot Human Rights Violations in East Timor (Komisi Pencari Fakta tentang Pelanggaran HAM Paska Jajak Pendapat di Timor Timur or "KPF"). This fact-finding Commission would comprise of members of National Commission on Human Rights, independent figures and experts. Its mission is three-fold: first, to compile facts, information and evaluate reports of human rights violations in post- ballot East Timor; secondly, to process their findings on human rights violations so that the perpetrators can be brought to justice; and lastly, to issue a final report and recommendations to the Indonesian Government on the Commission's findings and to have such report and recommendations made available to the general public. President B.J. Habibie, who was informed of this development on Wednesday evening, directly and immediately pledged, in a Presidential Instruction no. 12 of 1999, his full support to the work of this fact-finding Commission. My delegation would of course urge the international community, particularly the distinguished members of this August forum, to support the work of this Commission. "

[28] Mandiri, Jakarta, 3.5.99

> In October he said
>
> "There was no political directive on the armed forces to secure a political solution rather than a military solution. And if there is no political directive on the military, then they will revert back to what they do best, and that is to secure military solutions to what is basically a political problem[29]."
>
> Marzuki Darusman head of Indonesian National Human Rights Commission, vice-president of Suharto's Golkar party. He recently quit the commission and acts now as Attorney General in President Abdurrahman Wahid's "National Unity Cabinet"[30]

However much welcomed - a national Indonesian inquiry commission cannot substitute an independent international tribunal; this is the opinion of Indonesia's new President Abdurrahman Wahid. Before he was elected by the MPR- he was asked if he would accept an international investigation on East Timor or if he would insist on a national inquiry. Abdurrahman Wahid answered:

> "I do not like these national-level investigations. They cannot guarantee an impartial investigation. I do not believe that the national [human rights] commission will be able to carry out such a task. I am a member of that commission and I know that it will not implement justice. Only an international commission can do justice in this case.[31]
>
> President Abdurrahman Wahid

National inquiry or truth commissions have helped traumatised nations to shed light into the dark details of their past and may have helped to ease the sufferings of the victims. But national truth commissions can never substiute judicial ascertainment of guilt or innocence, they usually do not consider sentences or recompense and can therefore only supplement criminal persecution.

> "The political spirit of accommodation and compromise, which is so crucial for the peaceful resolution of all conflicts, is entirely inappropriate when it comes to compliance with the law. It is an affront to those who obey it and a betrayal of those who rely on its protection."[32]
>
> JUSTICE LOUISE ARBOUR, PROSECUTOR ICTY AND ICTR

National truth commissions may be an instrument for reconciliation but there are no substitute for justice.

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[29] Chris Masters, East Timor: The Vanishing Australian Broadcasting Corporation, Four Corners weekly news programme [TV and radio], 18/10/99 [transcript available online Oct. 22]

[30] Indonesia Wahid's New Cabinet: Full List Of Ministers, Dow Jones Newswires October 26, 1999

[31] from: Expresso, 23.10.99, Tony Jenkins, "Support for the militias will cease". The interview continues:
Q.: „Was General Wiranto responsible for what happened in East Timor? What would happen if the international commission were to formally accuse him of war crimes?"
A:" No comment."

[32] JL/PIU/401-E, JUSTICE LOUISE ARBOUR, PROSECUTOR ICTY AND ICTR , DESPAIR AND HOPE: KOSOVO AND THE ICC. INTRODUCTORY STATEMENT for The Hague Appeal for Peace, 13 May 1999

The perpetrators of crimes against humanity have to be removed from office and all spheres of political influence –to prevent them from further endangering human society. The case of East Timor is especially grave since genocide actions are still continuing[33].

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[33] HRW suggests the investigation should only look at crimes committed prior to Sep. 30th. However this raises the problem how to persecute atrocities that were committed later. It has to be noted that resolution 1999/S-4/1 does not set any qualifying date in those regard .

In fact **paramilitary troops are still committing crimes against humanity.**

The Jakarta Post of 1.11 1999 (East Timorese celebrate as troops leave) reports the pro-integration leader and secretary-general of the Forum of Unity, Peace and Justice, Alfredo dos Santos announced that militia activity will increase now as the TNI withdrew from East Timor. The deniability strategy of the TNI can be more efficient now.

Xanana Gusmao claimed on Oct. 18 that more than 50 East Timorese had been massacred over the weekend by Indonesian troops and militia allies in Oekussi. InterFET questioned at first if this allegation was true. But press reports confirmed atrocities in Oekussi.

See Oct 21 (AFP) -and

OEKUSSI, East Timor, Oct 27 (AFP) - "At least 34 people are believed to have been killed in the East Timorese enclave of Oekussi, victims of militia atrocities, according to a list compiled by returning refugees. [...]On Monday, a UN official said pro-Jakarta militias had committed systematic looting, rape and killing in the Oekussi enclave." There has been systematic intimidation, killings, a number of rapes and people being forced over the border," UN humanitarian affairs officer Patrick Burgess said after visiting the enclave. Burgess said Oekussi town, which was previously home to 11,000 people, was devoid of people, vehicles and even animals. Nearly all buildings had been destroyed, with the town's church the only structure left intact. Over the past 24 hours, several groups of armed militia, up to 20 strong, have been seen by the international peacekeepers (InterFET) in the western regions of East Timor, said Colonel Mark Kelly. They were chased back over the border by foot patrols supported by light reconnaissance helicopters. No contact was made but gunfire has been heard in the border region, Kelly said.

"Their actual reason for coming is anyone's guess, but obviously they want to harass the local people." [said Kelly] "We want to be there waiting for them," he said. [...]There have been reports that militia are taunting returning refugees, telling them they will seek them out and kill them. The Oekussi enclave -- otherwise referred to as Ambeno -- is one of East Timor's 14 districts, but is isolated inside West Timor and some 80 kilometres (50 miles) from the nearest point of the East Timor mainland. Vice Commander Taur Matan Ruak of the Falintil, the armed wing of the East Timorese pro-independence movement, said about 70 people have been killed in the enclave since October 10 while a UN official said a reconnaissance flight over the region had spotted bodies on the ground. Reports also continued to filter through about alleged massacre in Oekussi. *Earlier this week Kelly said the Indonesian commander in Dili had assured him the Indonesian armed forces had completely withdrawn from the enclave."*

There are also reports of selected killings and rapes in refugee camps in West Timor. In private communication the author also received credible reports about serious harassment against East Timorese students in Jogjakarta including stories of forced recruitment of young East Timorese men. The Indonesian newspapers Suara Pembaruan and Kompas reported on 19 October, 1999, Ariest Merdeka Sirait of the National Commission for the Protection of ***Children*** visited refugee camps in West Timor11-14 October. He saw nearly no people between 16 and 30 ys and heard that "Some have apparently been recruited to join the PPTT" militias. Earlier it was reported that on their flight to West Timor young men had. separated from their families. He also said that he had heard that PPTT set up recruitment centres paying West Timorese men Rp 300,000 a month.

Militia cross border warfare is being prepared. The investigation found that East Timorese children in West Timorese camps are at high danger. 312 babies had already died 11,892 were ill and malnourished. (According to the West Timorese social affairs department, 9,927 babies are ill and 1,965 children are malnourished.) 60 per cent of the refugees are children below the age of 14, most of them babies. Thousands children are orphaned. Children are suffering from lack of food and are malnourished.' At least forty children between the ages of 5 and 12 had been taken from Kupang to Denpasar and Jakarta by plane. Ariest is also is the co-ordinator for the National Commission's s department for the sexual and economic exploitation children. He said his organisation was trying to find out who had organised this and why the children had been removed. He said that the fate of these children was very worrisome as they more than likely facing the prospect of being exploited and used in the sex trade which is now expanding very fast. Many illegal adoptions with children been taken away in exchange for the payment of Rp 25,000 per child,' he said.

As reconciliation commissions do not carry real repercussions they do not prevent the culprits to continue to hold power over their victims. Research on the holocaust and the Khmer Rouge regime shows that traumata may travel through generations. The victims subconsciously feel guilt for the suffering that was inflicted on them. Impunity – as in the case of Cambodia – may lead to very serious damages in social life. It may even turn to crime a whole society filtering right down to the level of families. This prevents any development. Virtually every East Timorese- including the militia perpetrators- is traumatised, the East Timorese society is severely shaken. Only honest examination of the past, justice, can help establish true peace and in the next step support civil conflict resolution that only then will lead to reconciliation.

In the case of East Timor the genocide committed by Indonesians is not a national matter in any case.
East Timor is an independent nation that was invaded by Indonesia. To consider an Indonesian national inquiry commission as the apt forum to deal with the issue amounts to later acknowledge an illegal invasion.
Meanwhile East Timor as a state is unable to deal with persecution of the crimes in its own capacity. Its juridical system is non existent[34]. There is also no constitutional framework to even establish laws– East Timorese will have to establish their constitution first.

West Timor: The suffering still continues. A report from Kupang , East Timor International Support Center, Briefing Paper, Oct 8, 1999
"This story comes from a reliable priest who works in the area in question. Date: September 29. On the western border of Oecussi, just inside West Timor, is Oepoli. There are some 5000 Oecusse refugees at Oepoli spread over a wide area. Meanwhile Oecussi is empty, the town is burnt to a cinder with not a single resident, whilst the dogs and cattle eat the dead bodies in the main street of the town, where the stench of death is sickly and nauseating. In the refugee area of Oepoli there are pro-independence people and militias, commanded by the local Sub-District Officer. A militia killer receives from the Army Rp 1,000,000 – a huge sum - for every pro-independence person he kills. Sometimes there is competition to be the final killer for the sake of getting the money. The priest says that on average 6 young men are killed per night. During the day the militia killers sit around; they drink beer and talk to the people who are protecting the priest. They say it is acceptable to kill - the rewards for the dead are in the next world - but it is sinful to rape. According to the priest this is a reflection of the Islamic propaganda which they, though Catholic, have been fed. The killers came to the priest to ask him to type up a list of names. He agreed, typed it up, and returned it to the killers: Who are these people? Father, these are the people we have killed in the last few nights. This is our evidence. The next day, the same killers asked for another list to be typed up by the priest. There were 62 names. What is this list of names? This list, Father, is those we are going to kill. Keeping a carbon copy of the list, the priest rushed around warning the potential victims. There are no army personnel in the area."

[34] SIMON PRISTEL in Dili , New court first step to legal order The Australian25 October 99
"JUSTICE is returning to East Timor. The first court is expected to open soon, filling a vacuum in the legal system that officials hope will deter East Timorese from taking justice into their own hands. Australian Army Colonel Mark Kelly said yesterday a senior legal officer would act as a magistrate and hear everything from theft to murder cases. Under Interfet's UN mandate it has the power to lay charges. Colonel Kelly said the court was "the first step in establishing a legal system". One of the first cases the special court could hear is an alleged hit-and-run accident last week that left a young East Timorese boy dead. A person has been interviewed, but no charges laid. Colonel Kelly said the recent murder of clergy near the town of Com, west of Dili, could also be heard by the court. Australian police are soon expected in East Timor to help set up a civilian police force. It demonstrates how East Timor has to start almost everything from scratch because the Indonesian administration used to run everything. Establishing vital services, let alone a political system, is one of the greatest challenges facing independence leader Xanana Gusmao and his provisional government. Mr Gusmao conceded at the weekend that East Timor could not complete the rebuilding process without outside assistance. The UN is expected to stay in East Timor for another two years to help in the task."

The East Timorese independence leader Xanana Gusmao repeatedly stressed his priority is to rebuild the country and explicitly called for an international investigation.[35] It has been suggested though that the US administration pressured Gusmao not to insist too much. Demands for a tribunal would lessen prospects of ODA. Indonesia was more important to US strategic interests than small break-away islands.[36]

Compromises at the Special Session

It fell on Finnland currently holding the EU Presidentship (that will be taken over by Portugal next year) to table the text of resolution 1999/S-4/1. Given the stiff resistance by Asian autocratic governments it incorporated compromises, mainly that there be adequate representation by Asian experts in the commission and that the investigators' work had to be carried out "in co-operation with the Indonesian National Human Rights Commission"[37].But also the UNCHR's thematic rapporteurs are to contribute to the overall tasks to

> "gather and compile systematically information on possible violations of human rights and acts which may constitute breaches of international humanitarian law committed in East Timor ".
>
> UNCHR resolution 1999/S-4/1

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[35] f. e. Dili's destruction rocks Gusmao25 October 99 The Australian
From AAP and AFP correspondents in Dili
"EAST Timorese independence leader Xanana Gusmao yesterday washed his hands of meting out justice to those who destroyed his country. He called on the international community to investigate crimes that followed the vote for independence on August 30, while he would concentrate on the immediate humanitarian needs of the territory. [...]I'm devastated, simply devastated, Mr Gusmao said in an interview with the BBC after walking through the ruins of Dili's buildings for the first time.
I cannot imagine the challenges we have to face.
Asked whether he wanted a UN committee to ensure the administration of justice to those who killed and destroyed, he said: "If there are some international institutions throughout the world that can take charge of this issue, we are very thankful because the rainy season is starting and many people are suffering.
Our priority is to save people from famine, from illness. "

[36] See also: Joyo note on investigation of atrocities, November 1, 1999
" Joyo has heard that the behind the scenes political pressure to render investigation of East Timor atrocities ineffective has been so intense that even Mary Robinson has responded to the heat by pulling back from using her good offices to push the probe. Informants at UN headquarters have told Joyo that the failure to launch the probe to date is part of a strategy to let the Indonesian military and government off the hook. As Clinton himself has said numerous times, Indonesia is many times more important to U.S. and int'l interests than East Timor. It's all part of an insidious plot to let the rains wash away the evidence, to pay mere lip service to the probe, and let it peter out into oblivion. Part of the plot has been to make sure that Gusmao and other East Timor leaders get the message loud and clear -- that international assistance for rebuilding will be hampered if their calls for justice are too pronounced. Not embarrassing Indonesia so investment and military ties can be restored is obviously much more important to the powers that be than justice in East Timor."

[37] However full co-operation cannot be achieved since the Indonesian inquiry will be limited to the post ballot period (Aug 30) whereas the international experts panel is going to look into events since January 1999.

This leaves the whole range of instruments open. The commission of inquiry may look into allegations of genocide and crimes against humanity[38] but interestingly also into war crimes[39]. However the commission will only consider alleged crimes committed after 27 January 1999, when President Habibie announced his change of policy with regard to East Timor.
On October 15 the office of the High Commissioner released the names of the expert panel. Sonia Picado of Costa Rica, Judith Sefi Attah of Nigeria, Justice A.M. Ahmadi of India, Justice Mari Kapi of Papua New Guinea and Sabine Leutheusser-Schnarrenberger[40] of Germany would make up the commission, which will travel to the region following working meetings in Geneva.

The timeframe for the investigation and discussing the question of an international tribunal is very tight. The inquiry commission has to submit its report by Dec. 31 to the General Secretary of the Untied Nations who then will decide on how to proceed.

Resistance against a Tribunal

Will there be a powerful mandate for an ad hoc tribunal if some UN members strongly oppose a trial? Will there be an international tribunal at all? If the General Secretary decides to establish an ad hoc court and chapter VII is not applicable- what will this mean for the persecution of the crimes? And if he requests the UN Security Council to proceed like in the case of Yugoslavia and Rwanda - what will happen?

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[38] Crimes against humanity are widespread or systematic crimes against a civilian population, in war or peace. These crimes include, among other things: murder, extermination, deportation, forced expulsion, imprisonment, torture, rape, and deliberate denial of access to food.

[39] Human Rights' Watch has argued that war crime accusations may not be eligible in the East Timorese context, claiming that what happened between August 30 and middle of September was no war since there were no two sides. While it is true that Falintil Commander Xanana Gusmao had ordered his troops not to engage in combats during this period -therefore leaving out of question that the Indonesian (para)military committed genocide and crimes against humanity-it should not be forgotten that Indonesia indeed has been launching war against East Timor for 24 years and has continued to do so till October and maybe has not stopped yet. Whether it may be better for processional tactical questions to leave aside the war crime accusations (since the other two are considered to be even more horrendous) may require further discussion. What does the HRW argument mean for war crimes committed before January 1999 - shall they be de facto amnestied in HRW's view? Does the lack of war crime accusations augment to a de facto recognition of Indonesian sovereignty over East Timor?

[40] Sabine Leutheusser-Schnarrenberger, born 26.7.1951 in Minden (Westfalen), married., MP (FDP, Liberals,) since 1990. Vice chairperson of the working group foreign-, Security, Europe- and developmental policy , whip for HR and humanitarian aid, whip for narcotic drugs issues, representative in the committee for HR and humanitarian aid, committee member for affairs of the EU in the parliament Federal Minster for Justice 18. Mai 1992 to 17. January 1996 (waived her post because she felt gov't policy contradicted her liberal ideals), several chairposts on several levels in her party, since 1991 in the federal chair, since 1997 member of the presidium Studied law, second state examination in Duessldorf, senior government official the patent authority, voluntary judge at the industrial tribunal Munich, assessor at the federal Court for disciplinary proceedings, since 1990 member of the association of woman jurists, member (among others) of the association to protect children and of the EC of the Theodor-Heuss- Foundation (promotion of political education in Germany and Europe), since 1997 lawyer, several awards.

Maybe the UN security council meeting in New York at the end of October offered a glimpse into the future.
On the agenda: The establishment of the UN Transitional Authority in East Timor (UNTAET). Indonesia had officially ceased its claims of sovereignty over East Timor and it was commonly agreed that it fell upon the UN to provisionally take over power for an interim period. Staff needed to be assigned, the international troops to be reorganised. But the motion did not carry: China bargained on its veto power. It strongly opposed the inquiry commission to be mention in Resolution 1272 trying to prevent the impression that chapter VII provisions were quietly being attached to the East Timor file. The session started to go through all kinds of contortions. A new draft resolution dropped the reference to the inquiry commission but expressed "concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor" and called on "all parties to co-operate with investigations into these reports". Which investigations were meant? The Secretary General's international inquiry previously rejected by Indonesia? The Indonesia's own national commission that meanwhile is demonstrating its goodwill by inviting guests to public press briefings?
The resolution finally was passed[41].

Human Rights monitors suspect there is an explicit strategy to draw out the investigation procedure. Despite of being established by the Secretary General on the request of the special session in Geneva already six weeks ago, the U.N. Economic and Social Council (ECOSOC) has to endorse the inquiry and its financial plan. Huge streams of data travel in fragments of seconds around the globe these days, however the ECOSOC meeting had to be delayed since the UN Human Rights Commission's report from Geneva dated Sept. 27 did not reach the president until Oct. 25.[42], the day before the session. The paper needed a full month to cross the wild Atlantic to New York ploughing the deep and often unknown waters of the UN bureaucracy, struggling with unfavourable winds blown by unfriendly powers and would-be powers. Punctuality seems to have become the favourite argument for the Asian group in the UN. In September Asian states had challenged the legality of the special session in Geneva arguing that a fax transmission was late for two hours - an issue that was discussed so extensively that there would have been little time to talk about the massacres in East Timor, had the session not be prolonged[43].

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[41] UNITED NATIONS, Oct 25, 99 (AFP)

[42] Evelyn Leopold. UN body to meet on probe into Timor atrocities Nov 1, 1999 : "The layers of decision-making by the United Nations have prompted criticism from organisations such as Amnesty International and Human Rights Watch that bureaucracy and politics coincided to weaken the mission. [...]
The sequence of the delays are as follows:
Sept. 27 - The 1800s UN Human Rights Commission, meeting in a special session in Geneva, asks Annan to set up an investigation into possible human rights violations in East Timor.
Sept. 30 - Annan asks Robinson to set up the commission of inquiry. Robinson says she hopes to have forensic experts in East Timor within a week and appeals for $500,000.
Oct. 16 - Robinson announces five-member panel from Nigeria, India, Papua, New Guinea and Germany, headed by Sonia Picado of Costa Rica, an experienced human rights attorney.
Oct. 26 - Economic and Social Council meets but its president says a report from the Geneva commission reached New York only on Oct. 25 and members had no time to read it.
Nov. 2 - Economic and Social Council schedules meeting, providing it has financial plan for the mission.

[43] UN Economic and Social Council. E/CN.4/S-4/1/Add.1, Annotations to the provisional agenda, prepared by the Secretary General."

It is not only Indonesia, China and the Asian group that are trying to undermine, maybe to sabotage, the road towards an ad-hoc Tribunal on East Timor.
Also powerful interest groups in western countries, in particular in the USA and Australia but also in Germany, are less than eager to see a probe launched against the Indonesian Army. US and Australian intelligence agencies have at times collaborated with the TNI, by offering training to Kopassus officers or at least closing their eyes to what they knew was happening in East Timor for many years[44]. For sure they do not like their entanglements to be exposed too openly in front of the rest of the world. This makes the situation much different to that of investigating crimes in Kosovo - where NATO officials are eagerly engaged in finding any evidence that might legitimise their bombing campaign[45].
In the case of Kosovo investigators were readily offered access to evidence material by intelligence agencies. It is known that - in theory- a lot of such material could be

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[44] JOHN PILGER Timor conspiracy: Australia's role. Green Left Weekly, Issue #369 July 28, 1999
"The Australian government, along with other Western governments, watched the genocide unfold [i.e. the genocide o 24 years of Indonesian occupation, before the carnage of September, the ed.]. We now know, from leaked documents, that the Defence Signals Directorate spy base in northern Australia knew everything the Indonesians were doing.
This was confirmed to me by the CIA desk officer in Jakarta at the time, Philip Liechty, after he had retired. He said: "I saw all the hard intelligence. There were people herded into school buildings by Indonesian troops and the buildings set on fire. There were people herded into fields and machine gunned. The place was a free-fire zone, and Soeharto was given a green light by the United States to do what he did.
"We sent the Indonesian generals everything that you need to fight a major war against somebody who doesn't have any guns ... they got it direct, straight to East Timor. Without US military support, the Indonesians might not have been able to pull it off. None of this got out in the media.
"No one cared, you see ... It's something I will be forever ashamed of. The only justification I heard was that East Timor was on the verge of being accepted as a new member of the United Nations and there was a chance that the country might be leftist or neutralist and not vote with the US in the General Assembly."
Asked if other Western governments were part of this, Liechty said: "Of course they were ... The intelligence was shared. After all, it came from an Australian facility. To the Australians, like the Americans, the East Timorese were simply expendable.[...] For years, the Australian SAS had trained units of Kopassus, whose record of torture and murder in East Timor is documented, at its base near Perth.
Australian officers taught a course known as "hostile interrogation". It was the forerunner of Kopassus that murdered Australian TV newsmen Greg Shackleton and his four colleagues at Balibo, and went on to spearhead the invasion. [...]Why did Howard ignore another clear warning five months ago that the army was training militias, many of them brought in from West Timor? On March 4, his department was given an intelligence document that would have left him in no doubt about the coming violence. "

[45] See: Noam Chomsky. East Timor Is Not Yesterday's Story. Z-Net Oct 24, 1999:
"In Kosovo, preparation for war crimes trials has been underway since May, expedited at US-UK initiative, including unprecedented access to intelligence information. In East Timor, investigations are being discussed at leisure, with Indonesian participation and a tight deadline (Dec. 31). It is "an absolute joke, a complete whitewash," according to UN officials quoted in the British press.[...] " Indonesian Generals "do not seem to be quaking in their boots," the Australian press reports. One reason is that "some of the most damning evidence is likely to be... material plucked from the air waves by sophisticated US and Australian electronic intercept equipment," and the Generals feel confident that their old friends will not let them down -- if only because the chain of responsibility might be hard to snap at just the right point. There is also little effort to unearth evidence of atrocities in East Timor. In striking contrast, Kosovo has been swarming with police and medical forensic teams from the US and other countries in the hope of discovering large-scale atrocities that can be transmuted into justification for the NATO bombing of which they were the anticipated consequence -- as Milosevic had planned all along, it is now claimed, though NATO Commander General Wesley Clark reported a month after the bombing that the alleged plans "have never been shared with me" and that the NATO operation "was not designed [by the political leadership] as a means of blocking Serb ethnic cleansing.... There was never any intent to do that. That was not the idea."

available on the genocide in East Timor[46]. The inquiry commission will require such evidence, too, for several reasons. Instead of committing to the tiresome work of reconstructing the chains of command between the so-called militias and the TNI, it would be quite simple to refer to the taped communications between the paramilitaries and Kopassus with their unveiled (and unencrypted) orders to murder.
The Commission is facing time constraints as well. NGOs at the Geneva special session had lobbied for the inquiry mission to produce (several) reports. It only should have given a preliminary assessment as soon as possible. However the spessial session decided that the panel has to submit a final report till Dec. 31. Given the delay strategy by some UN members it is getting more difficult each day to accomplish to submit a substantial report by this date. And: As physical evidence is deteriorating, the later the examinations start, the more difficult and expensive they will be. The budget

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[46] Dto..
PAUL DALEY Secret Timor reports `at risk', The Age [Melbourne] October 24, 1999 sheds some light the Australian intelligence efforts in East Timor:
"Confidential reports from Australian military officers on the crisis in East Timor were probably compromised because the Defence Department refused to provide secure communications equipment. Defence and intelligence sources told The Sunday Age that there was ``serious disquiet" at senior levels of the Australian military and its intelligence services over a senior Defence Department official's rejection of an urgent request for encryption technology by military liaison officers in Dili.
The officers' dispatches, including reports on covert movements by Indonesian military and militias, contributed to briefing material that helped shape the Federal Government's responses to the East Timor situation. Australia's military intelligence agencies, meanwhile, have established that the Indonesian Army (TNI) planted spies into the United Nations Assistance Mission for East Timor (UNAMET), potentially compromising its operations before and after the 30August independence ballot.
Sources said the department rejected the encryption request in early July on the basis that it was in the interests of Australia, Indonesia and the UN for the operations of the liaison officers to be as ``transparent as possible". The department's response, they say, amounted to inviting the Indonesian military - which, with the militias, has been widely blamed for the post-ballot carnage - to spy on the Australian liaison officers. But a spokesman for the Defence Minister, Mr John Moore, said the Australians were under the jurisdiction of the UN, which has a ``normal protocol not to use secure communications in these circumstances". ``It was in keeping with the UN's wishes to be transparent, and we are advised that the MLOs undertook no activities which would have required secure communications," the spokesman said.
The primary responsibility of the officers was to work with the UN mission to ensure that the East Timor ballot was held in a free and fair environment. As part of that function, they acted as intermediaries with the Indonesian military.
But on an unofficial basis, the Australians were also sending reports to Canberra on the activities and covert movements of the Indonesian military and the militias in a bid to predict their intentions before and after the ballot.
They requested the encryption device after finding it unsatisfactory to send their intelligence reports through the Australian consulate in Dili, which also lacked secure communications. Locally available communications, including local e-mail, was unreliable and had been ``penetrated" by the Indonesians, they said. A source explained that the Indonesians ``were bugging everything". ``Consequently, Australia assumes that reporting to Australia by the MLOs ... were not secure and were accessed by the TNI." Six Australian officers were part of a team of about 50 international liaison officers attached to the UN mission.
The Sunday Age also understands that Australian signals intelligence has determined that the Indonesian military ``infiltrated" the UN mission and had ``adjusted its operations accordingly".
According to the signals intelligence, which comprised intercepted radio and telephone communications, some East Timorese employed by UNAMET were, in fact, agents of the Indonesian military. While working full-time for the UN in East Timor, they were regularly briefing the Indonesians on UN operations in the province. It is understood highly sensitive information was leaked out of the mission to the Indonesian military.
``It is beginning to sink in that here we had a quite heavily compromised operation. UNAMET and its MLOs and Civpols (civilian police) were in a situation where they were gathering material about the movements of TNI and the militias, and the TNI was penetrating UNAMET on several levels," an intelligence source said.
``First, some UNAMET staff are Indonesian agents; second, Australia's refusal to provide encryption technology means Indonesia was able to see their (the liaison officers') reporting.
`The Indonesians had a large flow of intelligence out of UNAMET ... and were adjusting their operations accordingly.'"

of 500.000 US Dollar[47]the High Commissioner asked for does not seem to match the requirements in material, technical and expertise terms anyway.

The enquiry commission has to engage in a race against time. It has to finalise its report soon but also to access the physical evidence before it is vanishing.

Political or Technical Problems ?

Still about 400.000 people - or more than half of East Timor's population- remain unaccounted for[48]. Many are feared to be dead.
However at the end of October 1999 , Interfet claimed to have found only 95 bodies[49]. But Ana Noronha, the director of the East Timor Human Rights Centre says NGO investigators discovered - without any systematic research - 136 bodies in just two weeks in Dili alone- excluding corpses in the destroyed and burnt down buildings. That is 40% more than InterFET discovered in the whole of East Timor in a longer period [50]

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[47] GENEVA, Oct 1 (AFP)

[48] Noam Chomsky. East Timor Is Not Yesterday's Story. Z-Net Oct 24, 1999.
"Even prior to the August referendum, some 3-5000 had been killed according to credible Church sources, about twice the number killed prior to the bombing in Kosovo (with more than twice the population), according to NATO. [...]
According to recent reports, the UN mission in East Timor has been able to account for just over 150,000 people out of an estimated population of 850,000. It reports that 260,000 "are now languishing in squalid refugee camps in West Timor under the effective control of the militias after either fleeing or being forcibly removed from their homes," and that another 100,000 have been relocated to other parts of Indonesia. The rest are presumed to be hiding in the mountains." Or are feared to have been killed.
Unicef's estimation of East Timor's original population is even higher:
See -Chris Master East Timor: The Vanishing Australian Broadcasting Corporation, Four Corners weekly news programme [TV and radio], 18/10/99 [transcript available online Oct. 22]
"[...]But the most persistent question, the one that follows you through every new burned and emptied village is - where are the people?
[...]
Mark Thomas, Communications Officer, UNICEFF: We figured there were about 890,000 people in East Timor some months before the election, for the referendum, and that about 260,000 are estimated now to be in East Timor. About 170,000 were estimated to be Indonesian citizens who returned to Indonesia, so it leaves us with around up to 400,000 as I say, but nobody's really sure.

[49] DAVID LAGUE Mass grave found as killing goes on. Sydney Morning Herald.26/10/99:

[50] [Rachel Mealey]Timorese try to save atrocity evidence from wet season. Australian Broadcasting Corporation, PM News October 18, 1999 6:46
RIGHTS-EAST TIMOR: Faster UN Probe Urged on Discovery of Bodies
By Sonny Inbaraj DILI, Oct 21 (IPS) -
"'InterFET lacks the investigative horsepower to do it but is securing the sites so that others can do the investigation," said an Australian Defence Forces InterFET spokesman Col Duncan Lewis. "
(END/IPS/ap-hd-ip/si/js/99)

> "[Human rights monitors in East Timor] were saying no-one is doing the work, obviously. [...]The wet season will start pretty soon. They fear that some of the evidence and some of the bodies is going to be washed out by the rivers [...]They just feel that it's urgent to start and since no-one is doing it they will have to go and do it".[51]
>
> Ana Noronha, the director of the East Timor Human Rights Centre

UNAMET chief Ian Martin said the responsibility for the investigation rested with the commission of inquiry being set up by the UN High Commissioner for Human Rights[52]. However the team of five (!) legal- not forensic- experts are believed to stay in East Timor only for days and, with a budget of US$ 500,000, will not be able to finance sufficient experts and equipment. In any case the inquiry commission is unlikely include the research, examination and preservation of forensic evidence. So it seems the task is rather falling on the InterFET mission.

But the InterFET commander is trying to lower the impressions about the scale of the carnage. When witness accounts of 200 people being killed in one single massacre in Suai had long made their way through the media for weeks and bodies started to wash up on the beach, he said "Those bodies at Suai create an image in my mind of some minor tragedies". He planned to "inter" the corpses, marked to await the arrival of a larger, more experienced investigation team[53]. Leaving the question of course what -under tropical conditions- will remain in the end to be examined more intensely. And by what team.

Major-General Peter Cosgrove, the Australian Commander of INTERFET acknowledges openly that his mission seriously lacks the expertise to deal with the problem even though there are quite a number of international police officers on the ground.[54]

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[51] [Rachel Mealey]Timorese try to save atrocity evidence from wet season. Australian Broadcasting Corporation, PM News October 18, 1999 6:46 see also East Timor faces a new enemy -- rain By Andrew Marshall DILI, East Timor, Oct 21 (Reuters) - [...]"For investigators probing alleged atrocities in the violence, the rain also presents a problem. The UN is already facing criticism that evidence is deteriorating due to delays in sending investigation teams. Now that the rainy season has begun, the deterioration will accelerate. [...]"

[52] Corpses wash up on East TimorDILI, East Timor, Oct 14 (AFP)

[53] dto.

[54] On the invetigation: DAVID LAGUE, Many atrocities likely to go unpunished Sydney Morning Herald. 28/10/99

"Superintendent Alan Castle was [...] was taken to the city's outskirts and shown what was clearly a mass grave. "There were at least three and possibly 10 bodies," he said. Superintendent Castle's investigators and military police from InterFET will certainly investigate this grave and the scenes of other murders. But it is less certain that the victims' families will see justice done. Police looking into atrocities in East Timor acknowledge that a lack of resources, evidence, experienced detectives, witnesses and access to suspects who fled to Indonesian West Timor will frustrate some investigations.

"Given time, people will see some justice," Superintendent Castle said. "In other cases, perhaps not." Some senior police believe that in most cases where atrocities were committed with the suspected involvement of the Indonesian military - and there were many - it is unlikely that prosecutions could be mounted.

> "I think what we need are those sort of people who actually handle capital crimes as a part of their profession. You know, again I'm not an expert. I think I need a forensic team, if you could say that, from detectives who go to crime scenes through to scientists who help them in their work. So it's that sort of thing where you've got evidence that will - you could put before a court".[55]
>
> Major-General Peter Cosgrove, Australian Commander, INTERFET

On the surface there is a technical problem. Clearly InterFET does not have the capacity to deal with forensic operations now- there is little technical equipment for such purpose, let alone refrigerators to preserve human bodied parts, there are barely no forensic experts. However in the operations of K-FOR in Kosovo such limitations are unheard of. Investigation teams included forensic teams right from the start, making it possible to collect evidence as soon as the multinational force gained access to any part of the territory. This points to a lack of military and /or political will in East Timor.

The dilemma also may partly have its roots in the fact that InterFET has no explicit mandate - and no formal obligation - to carry out proper examinations of a accidentally found bodies- let alone to search systematically for corpses and graves. The InterFET commander - facing a tricky military situation, especially as long Indonesia had not yet formally relinquished its claim over East Timor- was obviously eager not to anger his Indonesian partners , for tactical reasons.

[...] human rights activists believe the militias and their Indonesian military supporters may have removed many bodies. They also suspect that corpses washed up on beaches around the island suggest that an unknown number of East Timorese were dumped at sea during the short period when thousands were shipped to West Timor on Indonesian vessels ahead of Interfet's arrival on September 20. While the true extent of militia violence may never be known, investigating the existing sites is a challenge for the civilian and military police. Interfet's spokesman, Colonel Mark Kelly, said this week that military engineers helping to excavate a mass grave in a well at Liquica, 30 kilometres west of Dili, had been forced to stop and fill in the site after they had recovered 11 bodies. There were more bodies in the well, but the engineers judged it was too dangerous to proceed. Police in East Timor are stretched thin while they wait for the full 1,600-strong international police force to arrive. [...]But some analysts suspect there will be little international enthusiasm for the vigorous pursuit of suspects, particularly if the investigations point to senior figures in the Indonesian military. Australia has intelligence material indicating links between the violence and the military leadership, and the Howard Government has offered to co-operate with the inquiry. In Canberra yesterday, a spokesman for the Foreign Minister, Mr Downer, said Australia was prepared to help with the investigations into human rights crimes in East Timor, but emphasised it was a United Nations matter. While serious doubts remain whether the extent of the violence will ever be known or that justice will be done, hardened police like Superintendent Castle have been shocked at the brutality they have seen. 'I am horrified at the wanton cruelty that has been shown,' he said. 'It's just plain evil.'"

[55] Raphael Epstein. UN urged to speed up deployment to E Timor. Australian Broadcasting Corporation, AM News, October 30, 1999 8:08

> "There are, of course, issues to do with the great violence that did occur. One can't sweep under the table that there may well have been some very violent acts by some people, so there must be some accounting for that, but we're here ready to negotiate and conciliate where we can[56]."
>
> Major-General Peter Cosgrove, Australian Commander, INTERFET:

Major-General Cosgrove even went so far as to revise down the population statistics in his quest to minimize the scale of the tragedy. The smaller the carnage the softer the calls for persecution.
This purely military way of addressing the problem is heavily conflicting with the duties of a legal proceeding that has to maintain its independence in the name of justice.

The InterFET commander argues to go ahead with the investigations might endanger the IDPs on Indonesian controlled territory[57] . Or - in other words- he is being blackmailed with the fate of the hostages abducted by the so-called militias. It should be self-evident though that international troops under a UN mandate may not let themselves be blackmailed for reasons because neither international peace troops nor the UN may appear to be corrupt. It may also be asked by what strategic plan InterFET /UNTAET troops are readily advancing into a territory that is a quagmire swallowing them, slowly though.

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[56] Chris Masters, East Timor: The Vanishing Australian Broadcasting Corporation, Four Corners weekly news programme [TV and radio], 18/10/99 [transcript available online Oct. 22]

[57] Following for background information the full interview with Major-General Peter Cosgrove on population estimates:
Raphael Epstein. UN urged to speed up deployment to E Timor. Australian Broadcasting Corporation, AM News, October 30, 1999 8:08
"Major General Peter Cosgrove says while it's certain a large number of people were killed, the initial population figure should be revised down. He says he won't be happy until the refugee camps in West Timor are empty, so the final calculations can be made about the extent of the tragedy in East Timor. [...]
RAPHAEL EPSTEIN: So there's either a problem with the initial census, or we've got a huge number of missing people. It's either one or the other.
PETER COSGROVE: Yeah. And I'm inclined to say that our figures need refining, rather than to assert, without evidence, that there's, you know, some vast number in the hills. Simply, as you've been seeing, we don't see where there would be all these vast number inside East Timor.
RAPHAEL EPSTEIN: So you'd say there's a lack of evidence for I guess what you'd term large scale massacres?
PETER COSGROVE: Oh, it's - the definition of 'large scale'. You know, we're still finding graves with more than one body in. So, you know, you might be doing it in small villages where there's graves with a number of people in them. But when you start adding them up, adding them up, adding them up, you come up with a large number of people who've been killed. So, you know, our Australian experience is not extensive in this regard. It just seems very shocking to me what we're finding.
RAPHAEL EPSTEIN: Are you personally happy, I guess, with the pace of investigations into those crimes and massacres?
PETER COSGROVE: Well, from our point of view, we couldn't go any harder. I'd like to see more expert investigative capability on the ground. I think that'd be great.
RAPHAEL EPSTEIN: Do you think that's been a bit slow in getting here?
PETER COSGROVE: I don't know. I don't know what the issues have been. All I know is I can use them. I could have used them last week, and I can certainly use them this week. So the sooner they get here the better. I think what we need are those sort of people who actually handle capital crimes as a part of their profession. You know, again I'm not an expert. I think I need a forensic team, if you could say that, from detectives who go to crime scenes through to scientists who help them in their work. So it's that sort of thing where you've got evidence that will - you could put before a court.
RAPHAEL EPSTEIN: General Cosgrove has been extremely careful not to give the Indonesian Army any chance to take offence. For weeks he would not blame the Indonesian Army directly for the shooting incident on the border near Motaain, despite the admission they fired first. And he's not asked the TNI to leave Dili, despite Indonesia formally relinquishing its hold on the territory. He says that sensitivity could help ensure the safe return of refugees.

Meanwhile as responsibilities keep being pushed from UNAMET to InterFET/UNATAET and then on to the inquiry commission and probably soon back again to Unamet, the physical evidence - the prime one is considered to be the victims' bodies - is rotting away.

> "[F]rom the forensic pathology point of view if you haven't got a body then it's extremely difficult to collect evidence. However, that's not to say that you can't identify areas in the local geography that may have been associated with deaths; spillage of blood, other body fluids and indeed removal or separation of different body parts that may be found in the environment may also enable you to collect evidence that may be of use [...] it would be possible to analyse [...] that it contains the blood of 30, 40 or 50 people. [...] You have significant problems with the bodies that are decomposed, with loss of the soft tissue of the body[58]."
>
> Dr David Ranson, Deputy Director of the Victorian Institute of Forensic Medicine, Australia

It seems it is not by chance that the heat, the rainy season, that dogs and pigs, fish, crabs and ants that destroy the evidence.

> "When the Indonesian military saw the people still alive they give instructions to the militias to kill them. [...] The military say kill, they kill. We don't know who's bodies they are. They cut their heads off. They took a lot of the heads to the place where there is lots of crocodiles and they ate all the heads."
>
> EUGEBIO SOARES, MILITIA MEMBER[59]

The uncertainty of the fate of tens of thousands, maybe hundreds of thousands, is a special burden to their family members, adding uncertainty to the horror. This might well have been intended as a side effect by the psy-war trained corps of Kopassus.

PETER COSGROVE: There are so many different and complex emotions at play. If we are resolute but sensitive in our treatment of this issue, in the end the people who really count, who are the IDPs, will get back safe and sound."

[58] Australian forensic scientists' role in war crimes tribunal ,ABC/PM - Friday, September 24, 1999 6:26

[59] in: Gruesome clues point to fate of some of Timor's missing thousands, 7:30 Report, Australian Broadcasting Co. Transcript 4/10/99

There are strong indications that evidence was systematically removed or hidden , including human remains, in an effort to deny all charges and derail any persecution for the lack of evidence. That is not difficult in East Timor with its remote and rough hill territory. Already before the ballot there were rumours in Dili about the Indonesian army digging secretly large holes that were suspected to be used to hide corpses of future victims[60].

It has also been suggested that bodies were deliberately disposed in rivers that swell in the rainy season and will wash the corpses into the sea while others appear to have been thrown them directly into the sea..

EUGEBIO SOARES, himself a militiaman, said that many bodies were transported to the seaside and dumped on the beach or floated over the reef on makeshift bamboo rafts[61] .

Witnesses report that at scenes of massacres the perpetuators tried to clear the sites of crime of corpses and evidence like clothing or files. [62].

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[60] Information received in Dili by the author

[61] Gruesome clues point to fate of some of Timor's missing thousands Australian Broadcasting Co Transcript 4/10/99

[62] *DAVID BOEY Signs of a massacre. Straits Times [Singapore]*
October 18 1999
[In Suai]
"Their bodies were then dragged to the windows and thrown to the ground. Residents said the bodies were cleared on the evening of Sept 6 and taken aboard three trucks. The rest were burnt and the ashes cleared away.
The Straits Times was shown several spots where the burnings were said to have taken place. Witness says up to 200 massacred in East Timor church compound"

SUAI, East Timor, Oct 16 (AFP) -.
*[...]"**He said the militia had taken most of the bodies away.[...]"***

Rajiv Chandrasekaran Troops Gather Evidence of E. Timor Massacres Washington Post, Friday, October 22, 1999
"[...]A pile of underwear sits at the foot of a staircase.
[...]
But despite all the indications of a mass killing here, Australian army investigators with an international peacekeeping force have run into an unusual hurdle in trying to determine exactly what happened a lack of bodies. Thus far, the investigators have found only two sets of human remains in the torched and looted compound. They believe, based on reports from survivors of the attack and other witnesses, that the militiamen disposed of the bodies by burning them near the church, loading the charred corpses on a truck and then dumping them in one of several crocodile-filled lakes on the outskirts of Suai,
[...]
Human rights officials contend that militia groups took similar care to conceal other large-scale killings in East Timor, which they fear could hinder efforts to apprehend and prosecute those responsible. In the central town of ***Maliana, for instance, the bodies of 47 people allegedly hacked to death with machetes were carted to the coast, placed on a boat, weighted down with sandbags and tossed into the sea,*** the officials said. As of Wednesday, ***only three bodies had washed ashore.*** *"The great lengths the militias have gone to hide and destroy the bodies makes it very difficult for us to figure out what happened,"* said Capt. Jens Streit, an Australian army lawyer who is investigating human rights violations as part of the Australian-led multinational peacekeeping mission. "***We have eyewitness accounts, but other than things like shell casings and blood stains, we don't have a lot of physical evidence."*** [...]***Around Dili, for example, investigators have found 20 sites at which they believe people were killed in militia violence, but no more than nine bodies were found at each location. But even in those cases, officials said, the killers took steps to cover their tracks, particularly by burning corpses***. "In Kosovo, they didn't care about what the world saw," Streit said. "The Indonesians are extremely concerned about saving face. They want to be able to deny any of this happened."

Indonesian delegates already claim there is no evidence to go ahead with the probe[63]

There is also indication that the Indonesian intelligence agency helped army-linked culprits to cover up their crimes systematically[64].

It remain to be seen how much evidence systematic investigation might disclose. Hard evidence of the wholesale destruction is however obvious. There are also many witnesses who might be willing to testify - if investigators are able to guarantee their safety. Also population statistics have to be examined. The names of IDPs may be reconciled against voter registration lists - however this has to be done in a most cautious manner in order not to endanger anybody: Paramilitarys may consider registered voters as independence supporters and subject serious reprisal as the political cleansing in the IDP-camps continues[65].

Journalist Allan Nairn witnessed one incident in which police purposely destroyed Evidence .
Chris Master East Timor: The Vanishing Australian Broadcasting Corporation, Four Corners weekly news programme [TV and radio], 18/10/99 [transcript available online Oct. 22]

Allan Nairn, Journalist:" When I was arrested by the military and interrogated again at Polder, they were destroying police intelligence documents because they were preparing to shut down the police headquarters. And they were burning them and I was able to see one document before they burnt it which described a plan. It was called the Honowin Loro Sae II, Operation Honowin Loro Sae II . And it broke down by police station and by army unit how many people each one would be responsible for taking and relocating. And they actually gave an overall figure, it was 323,564 East Timorese who had been forcibly relocated under this plan."

[63] Indonesia tells UN "refrain from casting aspersions over Timor"
UNITED NATIONS, Oct 25 (AFP) -" Indonesia clashed with Western nations on Monday during a Security Council debate on East Timor and insisted that reports of human rights violations were unverified and exaggerated. [...] Indonesian ambassador Makmur Widodo told the Council that reports of violations of human rights were "unverified and often exaggerated".Indonesia's national commission for human rights has set up a fact-finding commission into abuses committed since East Timor voted for independence on August 30 and anti-independence militias ran amok. The fact-finding commission would "spare no effort to investigate and clarify numerous reports of allegations, suspicions and rumours surrounding those incidents," Widodo said. "***Allegations of mass killings have not been supported with even a shred of credible evidence***," he said, and "all quarters should therefore refrain from casting aspersions on Indonesia until information is verified and results ofimpartial investigations are made public."

[64] Compare: PAUL DALEY Secret Timor reports `at risk'. The Age [Melbourne] October 24, 1999
[...]
The Sunday Age also understands that Australian signals intelligence has determined that the Indonesian military ``infiltrated'' the UN mission and had ``adjusted its operations accordingly". [...]
``The Indonesians had a large flow of intelligence out of UNAMET ... and were adjusting their operations accordingly."[an Australian intelligence source said.] Indonesian military also tried to delay intelligence gathering by InterFET planes that could have produced hints for massgraves or dumped bodies.

Indonesia refuses InterFET request to use F-111 for reconnaissance
JAKARTA, Oct 14 (AFP) - "The Indonesian airforce has rejected a request from the UN-authorised International Force in East Timor (InterFET) to use a Royal Australian Airforce F-111 for photo-reconnaissance, a report said Thursday. The Jakarta Post quoted Air Vice Marshall Ian Santoso as saying that the request had been made to him, and turned down, in a meeting in the Indonesian city of Ujung Pandang on Wednesday". If they insist on doing so (making F-111 flights) they will have to face the Indonesian air force's fighter aircraft," Santoso said, adding that InterFET "understood and accepted" the decision.
"Frankly I told (him) that if they wish to fly over East Timor they can do so after the People's Consultative Assembly (MPR) officially announce that the province is no longer a part of Indonesia. "Until then, do not even try, because we are ready to face them." [...]

[65] Fate of missing East Timorese still a mystery
By Kurt Schork DILI, East Timor, Nov 1 (Reuters) -

Not all East Timorese registered themselves of course- either of fear, because of displacement and loss of documents or because they were too young.
It has to be verified how many East Timorese joint transmigration programs voluntarily - again in a strictly confidential manner. This may be one of the most difficult parts of investigation the genocide of East Timor.

> "At the end of the twentieth century, at the beginning of a new millennium, the world has progressed to the point where it is now able to watch genocide live on television. [...] Red Cross workers, priests, nuns and traditional village leaders were shot and hacked to death.[...] The final death toll in this Asian holocaust is still unknown. However, the UNHCR has estimated that the entire population of East Timor, 800,000 people, have been displaced. Over two hundred thousand were transported in Army trucks at gunpoint to West Timor and other islands of Indonesia. Here, as the world saw happen in the Congo, they are being held hostage in concentration camps under the total control of armed militia led by Kopassus Special Forces troops[66]."
>
> KAY RALA XANANA GUSMAO President. National Council of Timorese Resistance, CNRT

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[66] KAY RALA XANANA GUSMAO President. National Council of Timorese Resistance, CNRT, SPEECH to CHATHAM HOUSE, London, 6 October 1999

Recommendations

(1) The UN Security Council, the General Secretary and the High Commissioner for Human Rights ought to call urgently upon the International Force for East Timor (InterFET) / UN Transitional Authority in East Timor (UNTAET) to assist the commission of inquiry by actively looking for physical evidence of crimes, including human remains, to examine the evidence material in a scientifically appropriate way and/or preserve such evidence for further examination.

(2) Until such an explicit mandate is issued and implemented INTERFET representatives should refrain from commenting on the validity of evidence and giving personal assessments that are not based on systematic research including comments on the total population before August 1999.

(3) InterFET/UNTAET should be transparent about their investigation methods and provide unlimited and secure access to scenes of crimes and places where evidence was found for forensic personnel, NGOs and human rights monitors, independent researchers and journalists in guided visits.

(4) Human remains that do not demand further examination should be buried in a manner that complies with the dignity of human beings as enshrined in the Universal Declaration of Human Rights. Religious prescriptions and taboos have to be respected.

(5) Member states of the UN should bestow adequate political, diplomatic, financial and material support as well as probably also human resources on the Inquiry Commission and InterFET/UNTAET to carry out their duties in accordance with international standards. The capacities of the High Commissioner for Human Rights' Office should no to be stretched for the benefit of other issues and regions. The voluntary deployment of forensic, linguistic and research- experts is suggested as well as donating necessary equipment and adequate financial resources.

(6) This could be a priority for German authorities as this may help to make up for the confusion about not sending five policemen promised to the Civpol contingent as well as for the controversial deployment of a medical corps in Darwin rather than in East Timor itself - depriving East Timorous of any chance of lifesaving medical attention, despite the positive experiences of the "Angels of Phnom Penh" corps treating locals in the UN-mission to Cambodia.

(7) Funding organisations, state and private donors should consider to unbureaucratically render financial and material supply as well as technical assistance to East Timorese human rights monitors active in researching crimes against humanity. Even basic assistance in the field of documentation (photocameras, dictating machines etc) and transportation seems to be urgently required.

(8) The newly established government of Indonesia should not destroy its freshly won credit by obstructing the examinations. On the contrary the world community expects its full co-operation by granting free access in a confidential atmosphere to all individuals and representatives the panel and staff of the inquiry mission request to meet with- also on Indonesian territory. It should also reverse the position of the previous government that was much criticised for sacrificing the interest of the nation to nepotism and corruption and declare its intend to unconditionally accept the international inquiry mission's findings.

(9) The inquiry commission, nor four key UN special rapporteurs on extrajudicial killings, internally displaced persons, torture and violence against women as well as the working group on disappearances , that are going to contribute their findings, should not - under any circumstances - tolerate any obstruction to their mandate. This includes possible black mailing with regard to East Timorese hostages on Indonesian controlled territory. The UN juridical mechanism may not be challenged or compromised. UN member states should assist the irrefutability of the commission with diplomatic, political and if needed economic means. Military retaliation should not be ruled out.

(10) Intelligence agencies should submit relevant material to the commission to facilitate its investigations.

(11) UN bodies and member states should actively consider programs to protect witnesses including granting asylum and providing necessary travel documents and financial resources to carry out such programs.

(12) Special procedures for persons turning Queen's evidence should be discussed.

(13) The commission is encouraged to consider testimonies of witnesses based in Indonesia including Jakarta and the islands of (Kalimantan,) East Nusa Tenggara/West Timor, Australia/ Darwin, East Timor, Macao and Portugal.

(14) All institutions, organisations, authorities and individuals concerned to be aware of the time limits without compromising their duties.

(15) UN member states are requested to speed up the ratification process to establish the International Criminal Court by now as soon as possible.

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Annex

UN related Documents

Special Session of the UN Commission on Human Rights

Documents related to the UN Commission on Human Rights

Commission on Human Rights resolution 1999/S-4/1

(adopted at its fourth special session)

Following is the resolution on East Timor that was successfully voted on in Geneva at the UNCHR on September 27, 1999. Also supporting the resolution, but not co-sponsors, were: Paraguay, Guatamala and Costa Rica. Total of 32 countries in favour; 12 against; and 6 abstaining.

Albania*, Angola*, Australia*, Austria, Belgium*, Brazil*, Bulgaria*,
Canada, Cape Verde, Cyprus*,
Czech Republic, Denmark*, Estonia*, Finland*, France, Germany, Greece*,
Honduras*, Hungary*,
Iceland*, Ireland, Italy, Latvia, Liechtenstein*, Lithuania*, Luxembourg,
Malta*, Mozambique,
Netherlands*, New Zealand*, Norway, Poland, Portugal*, Romania, San Marino*,
Slovakia*, Slovenia*, Spain*, Sweden*, Switzerland* and United Kingdom of
Great Britain and Northern Ireland

Situation of human rights in East Timor
The Commission on Human Rights,

Meeting in special session,

Guided by the principles embodied in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, the Convention on the Rights of the Child, international humanitarian law, including the Geneva Conventions of 12 August 1949 for the protection of war victims and the Additional Protocols thereto of 1977, and other relevant international human rights instruments,

Conscious of its responsibility to promote and encourage respect for human rights and fundamental freedoms for all, and resolved to remain vigilant with regard to violations of human rights wherever they may occur and to prevent such violations,

Reaffirming that all States have an obligation to promote and protect human rights and fundamental freedoms as stated in the Charter of the United Nations and as elaborated in the Universal Declaration of Human Rights and other applicable human rights instruments,

Recalling the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor (the overall agreement), signed in New York on 5 May 1999, and the agreements between the Governments of Indonesia and Portugal and the United Nations of the same date regarding the modalities for the popular consultation of the East Timorese through a direct ballot and regarding popular consultation (the security agreement) (A/53/951-S/1999/513, annexes I-III),

Deeply concerned by the human rights situation in East Timor, and in particular reports indicating that systematic, widespread and flagrant violations of human rights and international humanitarian law have been committed in East Timor, as well as the situation of displaced persons in East and West Timor and elsewhere in the region,

Recalling Security Council resolution 1264 (1999) of 15 September 1999 in which the Council demanded that those responsible for such acts be brought to justice,

Recalling also its previous resolutions and statements by the Chair of the Commission on Human Rights on the subject, the most recent of which was the statement by the Chair made on 23 April 1999 at the fifty-fifth session of the Commission (E/1999/23-E/CN.4/1999/167, chap. IX, para. 243),

Deeply concerned by the report of the United Nations High Commissioner for Human Rights following her visit to Darwin and Jakarta** This document will be distributed subsequently as a document of the fifty-sixth session of the Commission. and the information provided by the United Nations High Commissioner for Refugees and non-governmental organizations concerning the human rights and humanitarian situation in East Timor,

1. Welcomes:

(a) The decision of the Government of Indonesia to allow the exercise by the East Timorese of their right of self-determination and the massive participation of the East Timorese in the free and fair popular consultation of 30 August 1999, as well as the announcement by the Government of Indonesia on 4 September 1999 of its intention to honour and accept the result of the popular consultation;

(b) The efforts deployed by the Secretary-General in promoting the consultation and in trying to implement fully the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor and the expressed commitment of the Government of Indonesia to cooperate with the international community;

(c) The invitation by the Government of Indonesia of an international force and its deployment in East Timor as well as the contribution of all States, in particular those in the region, to restoring peace and security;

(d) The efforts of the United Nations High Commissioner for Human Rights in addressing the situation, including her visit to Darwin and Jakarta;

(e) The assurances given by the Indonesian authorities that the displaced persons have the freedom to exercise their right to return voluntarily, the assurances regarding the activities of the Office of the United Nations High Commissioner for Refugees and other international humanitarian organizations, including the security of the personnel of the Office of the High Commissioner, and the further assurances regarding free access to all displaced persons, in particular in West Timor;

(f) The humanitarian response to the current crisis;

(g) The establishment on 22 September 1999 of the independent Fact-Finding Commission for Post-Ballot Human Rights Violations in East Timor by the Indonesian National Commission on Human Rights, and looks forward to the concrete results of its work in close cooperation with international bodies;

2. Condemns:

(a) The widespread, systematic and gross violations of human rights and international humanitarian law in East Timor;

(b) The widespread violations and abuses of the right to life, personal security, physical integrity and the right to property;
(c) The activities of the militias in terrorizing the population;

3. Expresses its deep concern:

(a) At the widespread forced removal and dislocation of persons to West Timor and other nearby areas;

(b) At the serious humanitarian situation of the displaced East Timorese, who have been deprived of food and access to basic health services, particularly as it affects children and other vulnerable groups;

(c) At the violence and intimidation directed against international agencies as well as most of the independent media;

(d) At the lack of effective measures to deter or prevent militia violence and the reported collusion between the militias and members of the Indonesian armed forces and police in East Timor;

4. Affirms that all persons who commit or authorize violations of human rights or international humanitarian law are individually responsible and accountable for those violations and that the international community will exert every effort to ensure that those responsible are brought to justice, while affirming that the primary responsibility for bringing perpetrators to justice rests with national judicial systems;

5. Calls upon the Government of Indonesia:

(a) To ensure, in cooperation with the Indonesian National Commission on Human Rights, that the persons responsible for acts of violence and flagrant and systematic violations of human rights are brought to justice;

(b) To ensure that human rights and international humanitarian law are fully respected in regard to all persons within its jurisdiction or under its control;

(c) To continue to implement its obligations under the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor;

(d) To guarantee the voluntary return of all refugees and displaced persons, including those who have been forcibly displaced to camps in West Timor;

(e) To ensure immediate access by humanitarian agencies to displaced persons, both in East Timor as well as West Timor and other parts of the Indonesian territory, and to guarantee the security and free movement of international personnel;

(f) To continue to allow the deployment of emergency humanitarian assistance;

(g) To cooperate fully with the United Nations High Commissioner for Human Rights and with the special procedures of the Commission and to continue to cooperate with the Office of the United Nations High Commissioner for Human Rights in Jakarta;

6. Calls upon the Secretary-General to establish an international commission of inquiry, with adequate representation of Asian experts, in order, in cooperation with the Indonesian National Commission on Human Rights and thematic rapporteurs, to gather and compile systematically information on possible violations of human rights and acts which may constitute breaches of international humanitarian law committed in East Timor since the announcement in January 1999 of the vote and to provide the Secretary-General with its conclusions with a view to enabling him to make recommendations on future actions, and to make the report of the international commission of inquiry available to the Security Council, the General Assembly and the Commission at its fifty-sixth session;

7. Decides:

(a) To request the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences, and the Working Group on Enforced or Involuntary Disappearances to carry out missions to East Timor and report on their findings to the Commission at its fifty-sixth session and, on an interim basis, to the General Assembly at its fifty-fourth session;

(b) To request the United Nations High Commissioner for Human Rights to facilitate the activities of the mechanism of the Commission;

(c) To request the High Commissioner to prepare a comprehensive programme of technical cooperation in the field of human rights, in cooperation with other United Nations activities, focusing especially on capacity-building and reconciliation with a view to a durable solution to the problems in East Timor;

(d) To request the High Commissioner to keep the Commission informed of developments.

* In accordance with rule 69, paragraph 3, of the rules of procedure of the functional commissions of the Economic and Social Council.

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